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# Losing The SAVE Rule Will Hurt All Federal Student Loan Borrowers; Restoring Some Provisions Could Help

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A promised negotiated rulemaking provides an important opportunity to restore important protections for people with federal student loans. Although the SAVE Plan (Saving on a Valuable Education) is ending, the Department of Education should consider restoring regulatory provisions that apply to all IDR plans that could dramatically improve repayment options for borrowers.

## Background

In 2023, the U.S. Department of Education took critical steps to improve student loan repayment rules by issuing new income-driven repayment plan regulations. These changes addressed longstanding problems that contributed to one in five 5 federal student loan borrowers being in default and resulted in an increasing share of people entering retirement age with student loan debt. The rule created a significantly more affordable income-driven repayment (IDR) plan, called the SAVE plan. But, the rule also included regulatory provisions that would have implemented long-needed fixes to make it easier for borrowers to enroll and stay enrolled in all IDR plans, prevent borrowers from struggling with decades of debt, and eliminate hidden traps that ensnare people in debt for decades.

The SAVE plan was challenged in court by conservative state attorneys general in 2024, who decried the plan as an attempt at debt cancellation. In December 2025, the Department of Education agreed to end the SAVE plan and asked the court to vacate virtually all of the 2023 Rule, including most of the reforms that applied to the other IDR plans, even though those other provisions had not been challenged in the lawsuit.[1] In its settlement agreement, the Department pledged to convene a negotiated rulemaking to consider formally repealing all or some of the 2023 Rule. In March 2026, the court complied with the Department's request and ordered that most of the 2023 Rule be vacated.

## Specific Improvements

As the Department looks ahead to the promised rulemaking, it should take the opportunity to restore the portions of the 2023 Rule that are unrelated to the SAVE plan and would improve repayment outcomes for student loan borrowers. Specifically, the Department should restore the following critical improvements to repayment from the 2023 Rule. More detail on each recommendation follows this list.

### *1. Allow automatic enrollment and re-enrollment in IDR.*

The Department should ensure that borrowers who would benefit from IDR do not miss out on it by allowing automatic enrollment of borrowers into IDR if they miss more than two months of payments in more expensive plans. It should also allow automatic annual recertification of borrowers' incomes, for borrowers who consent to data-sharing, to reduce the incidence of one of the most common barriers to staying enrolled in IDR plans.

> *This provision would modernize all of the IDR plans, reduce annual paperwork burdens, address the widespread problem of borrowers "falling out" of IDR plans based on missed paperwork, and prevent borrowers from falling into default if they were eligible for lower payments.*

### *2. Allow borrowers in default to enroll in IDR.*

The Department should allow defaulted borrowers to enroll in the Income-Based Repayment (IBR) and Repayment Assistance Plan (RAP) plan so that they can receive credit for payments made and receive forgiveness after 20 or 25 years of repayment.

> *Many borrowers who have been in default for years are low-income and would have been eligible for low- or $0-payments had they known about their eligibility for an IDR plan. Allowing borrowers in default to enroll in IDR prevents student loan debt from becoming a debt trap that follows borrowers to the grave.*

### *3. Protect IDR credits when borrowers consolidate their loans.*

The Department should credit consolidation loans with a weighted average of the IDR qualifying time earned on the loans prior to consolidating. It should permanently end the practice of wiping out the time borrowers earned towards IDR forgiveness when they consolidate.

> *Borrowers who consolidate often find themselves in repayment for decades longer than they would have been if they had not consolidated and often don't realize that consolidation has this severe and unwarranted drawback.*

### *4. Provide borrowers with a way to "buy back" periods of time in forbearances and deferments ineligible for IDR forgiveness.*

> *Historically, servicers have steered borrowers into forbearances and deferments that didn't count towards forgiveness and significantly extended their repayment. Allowing borrowers to "buy back" periods of ineligible time would ensure that borrowers wouldn't be plagued for decades by prior misinformation.*

## Detailed Recommendations

### *1. Streamline enrollment in IDR and employ auto-recertification to modernize the IDR system and keep eligible borrowers enrolled.*[2]

IDR plans provide borrowers more affordable monthly payment options and are a critical tool to avoid default. However, historically it has been difficult for borrowers to enroll and stay enrolled. The 2023 Rule addressed this by reducing borrowers' paperwork burden and automating the process of enrolling and staying enrolled.

First, the 2023 regulations allowed the Department to automatically enroll borrowers in the IDR plan with the lowest monthly payment if they failed to make payments for 75 days and had provided consent for the Department to use the last year's income and family size tax filing data.[3] The Department noted that this change was important because there was chronic underenrollment in IDR plans. It wrote, "far too often borrowers end up in default on a student loan when they would have had a low or even a $0 payment on an IDR plan," often because these borrowers are not aware of IDR plans.[4] In fact, a 2015 analysis of the loan portfolio revealed that 70% of defaulted borrowers were eligible for the Income-Based Repayment plan.[5] These borrowers would have had lower payments under an IDR plan than under the standard plan, and many might have been able to make their payments and avoid default if they had accessed IDR. Another analysis revealed that only 43% of borrowers enrolled in means-tested public benefits programs like SNAP, TANF, or SSI were enrolled in IDR, despite that many would qualify for $0 payments in IDR.[6] Enrolling borrowers in an IDR plan after 75 days of delinquency would ensure that far fewer low-income borrowers would end up in default, protecting more families from the financial penalties associated with default and saving the government from having to pay collection costs.

**Example:** Bernard makes the federal minimum wage. He owes $10,000 in Direct Loans and his payments under the Standard Plan are $113 per month. In 2022, Bernard consented to allowing the Department to receive his income information from last year's tax filing. He recently stopped making student loan payments because he cannot afford them and also afford critical medication. Under the 2023 Rule, he would automatically be enrolled in an IDR plan and would qualify for $0 payments based on his current income, and his loans would remain in good standing. Without the 2023 Rule, Bernard is at high risk of remaining delinquent and ultimately defaulting. After 270 days of nonpayment, Bernard will default and be subject to damaged credit, wage garnishment, and tax refund offset, sinking him deeper into poverty.

Second, the regulations allowed the Department to automatically recertify consenting borrowers' incomes annually, without requiring borrowers to submit paperwork or fill out online forms each year of their often 20- to 25-year payment term.[7] The Department noted that this intervention was sorely needed, as missed recertification forms were resulting in many struggling borrowers losing out on income-driven repayment and seeing their payments suddenly spike as a result, leading to greater delinquency and defaults. In 2019, a whopping 61% of borrowers did not certify their income on time, and 43% still had not recertified within six months of their recertification deadline, meaning that those borrowers experienced significantly higher monthly payments.[8] Allowing borrowers to consent to automatic recertification, as explicitly authorized by Congress in 2019,[9] would significantly reduce administrative friction in running the IDR program and keep borrowers in the plans they request.

These two provisions could save the government substantial money, as student loan servicers would not have as many borrowers become more than 75 days delinquent (reducing high-intensity servicing demands) and would not need to chase borrowers to recertify their incomes each year and deal with the complications of late recertifications. Further, the government would not need to expend money in fruitless collection efforts against low-income borrowers, as those borrowers would be funneled into an IDR plan instead of default. Without these important default diversions, the default portfolio will balloon with borrowers who could not afford standard payments but were eligible for more affordable payments that could have allowed them to successfully manage their loans. These borrowers will be subject to the government's collection powers—including wage garnishment, tax refund offset, and Social Security offset—further endangering their financial security.

> In addition to restoring this provision, the Department should increase the touchpoints where the Department requests that borrowers provide consent to share their tax filing information. The 2023 Rule only required the Department to request consent to share limited tax filing data when a borrower took out new loans, consolidated existing loans, or completed an IDR application. This is too limited and would miss many existing borrowers who will likely default without the protection of this provision. The Department should instead request consent during many more interactions with borrowers, including when a borrower requests a forbearance or deferment, logs into studentaid.gov, logs into their account with their servicer, enters a rehabilitation agreement, and when borrowers are notified their loans are past due or will be subject to collection.

### *2. Allow defaulted borrowers in default to enroll in the Income-Based Repayment and RAP plans.*[10]

Default currently acts as a lifelong debt trap for many borrowers who cannot keep up with accruing interest and will never have the means to pay off debts in full. Default disproportionately impacts borrowers who rely upon higher education as a vital ladder to socioeconomic mobility, including students from low-income families, first generation college students, and Black borrowers.[11] Default will continue to serve as a debt trap if borrowers in default do not receive credit towards IDR forgiveness.

The 2023 Rule addressed this by allowing borrowers in default to enroll in the Income-Based Repayment plan (IBR). Once the borrower was enrolled in IBR, they could receive credit when making voluntary payments or when amounts collected through the government's collection powers exceeded what the borrower would otherwise pay in the 10-year Standard Plan (the default repayment plan if borrowers do not select another, which also counts as qualifying time towards Income-Driven Repayment).[12] This change reflected existing authority from the statute that created the IBR plan, which did not exclude borrowers from enrolling in the plan if they were in default.[13]

This provision ensures that borrowers with uncollectible loans do not remain in perpetual debt. Analysis using Department of Education data indicates that the government collections are unlikely to recover from borrowers who have been in default for more than seven years.[14] Yet a significant portion of the default portfolio has been in default for significantly longer: almost a million borrowers have been in default for over 20 years.[15] Allowing borrowers in default to enroll in IBR (or the new Repayment Assistance plan) and accrue qualifying time for forgiveness would allow those borrowers to extinguish their debt consistent with those plans after 20 and 30 years of payments, including payments made voluntarily and in default. Further, it would mean that if borrowers successfully exited default, they would not have years tacked on to their repayment period.

Prior to this change, the Department was wasting money trying to collect for decades from borrowers who were too poor to ever repay their debt. Borrowers' balances would go up rather than down as time passed, as any amounts collected from them could not keep up with the interest that is continuously charged in default. If this administration restores this provision and applies it retroactively, it could remove uncollectible accounts from the default portfolio now, and ensure that the government's collection funds will be spent on borrowers who have a means to repay their debt now and in the future.

While this provision is an important improvement to the IDR program as written, this administration can and should make critical improvements. This administration could improve the efficacy of this regulation by specifying that borrowers in default who have consented to income sharing will be automatically enrolled in IBR or the newest plan, the Repayment Assistance Plan (RAP), creating parity with the treatment of borrowers who fall behind on their payments, as it did when promulgating its final RISE rule.[16] This would increase the impact of the change as well as the chances that financially distressed borrowers who lack ability to repay in full ultimately have their debts discharged and removed from the collection portfolio.
In addition, the Department should make clear that it will cap involuntary collections at the amounts that the borrower owes in the RAP or IBR plan, depending on which plan the borrower is eligible for. This would help ensure that student loans in default do not sink the most vulnerable borrowers even deeper into poverty.[17]

### *3. Provide consolidation loans with a weighted average of IDR qualifying time that accrued on the loans before they were consolidated.*

Prior to the 2023 Rule, there was a hidden hazard within the IDR system: if borrowers consolidated their loans, time they had already spent in repayment that would have counted towards IDR forgiveness would be lost. Borrowers were often blindsided by this unintended "consolidation penalty."[18] There are many good reasons why a borrower would turn to consolidation, including to exit default, to access IDR plans only available for Direct Loans (which will soon include the RAP plan), or to simplify repayment and ensure that one loan servicer handles all of their loans. Borrowers rarely understood that consolidating would result in the loss of all IDR qualifying time they had already earned through years of repayment, and would mean that they would have to spend another 20 or 30 years (depending on the plan) in repayment before they would qualify for their remaining balance to be forgiven through IDR. This policy flaw increased the likelihood that borrowers would carry their student loan debt well past established repayment terms, and increasingly into retirement age.

The 2023 Rule made it so that borrowers who consolidated their loans would retain a weighted average of the time that counted towards IDR forgiveness that had accrued on their underlying loans prior to consolidation.[19] This ensured that borrowers would not be penalized for consolidating their loans. Further, the Department observed that the prior practice of resetting borrowers' IDR repayment clock was increasing "borrower frustration" and distrust in the fairness of the student loan system.[20] That distrust increased the likelihood that borrowers would give up and stop engaging with their student loans.

If the administration opts to revert back to the consolidation penalty, borrowers will be at risk of again losing the repayment credit they have earned if they consolidate, increasing borrower frustration, distrust, and time in debt. The consolidation penalty also raises complexity for servicers, default resolution agents, counselors, and advocates who help borrowers navigate the student loan system, by imposing a surprising and complicated downside to consolidation that should be explained and assessed against the potential benefits of consolidation.

The consolidation penalty could also dissuade borrowers with Perkins or FFEL loans from consolidating to enroll in the RAP plan. Particularly hard hit will be borrowers with FFEL loans—who have typically been in repayment for a decade or more, given that those loans stopped being issued in 2010—who want to take advantage of the RAP plan. They will have to weigh whether it is worth losing all of the IDR credit they have earned to consolidate their loans into Direct Loans so that they can enroll in the RAP plan, where they would face 30 more years of repayment before qualifying for forgiveness. Similarly, allowing the return of the consolidation penalty could spell disaster for the millions of low-income people in default who entered repayment a decade or more ago, as consolidating out of default would mean losing credit for any payments they made and starting a new 30-year clock toward forgiveness in RAP.

**Example:** Maria has a Department-held FFEL loan that she's been repaying in the Income Based Repayment Plan for 15 years. She wants to enroll in the RAP plan, but to do so, she must consolidate her FFEL loan into a Direct loan. Under the 2023 Rules, Maria would retain 15 years of qualifying repayment towards the 30 years of qualifying repayment required for forgiveness under the RAP plan. Without the 2023 Rules, Maria will need to make 30 years of additional payments—a total of 45 years—before she will be eligible for cancellation of her remaining balance.

### *4. Allow borrowers to "buy back" periods of time ineligible for IDR forgiveness.*

The 2023 Rule allowed borrowers to "buy back" periods of time spent in a deferment or forbearance that did not count as IDR qualifying time and to get IDR credit for that time by paying the amount the borrower would have owed in an IDR or Standard plan during that period.[21] If the Department did not have income and family size data for the time period the borrower wishes to buy back,it would ask the borrower to provide it. That means that borrowers who should have been in a low- or $0 IDR plan based on their low income and inability to afford Standard payments, but who were instead placed into a forbearance by their servicer, would not be penalized for not knowing about their student loan options. This regulatory provision paralleled a similar provision in the separate Public Service Loan Forgiveness (PSLF) rules, which also allow borrowers to "buy back" time spent in a nonqualifying deferment, forbearance, or repayment plan.

This change was made to give borrowers a second chance to earn repayment credit, and to reduce the amount of repayment credit that borrowers miss out on simply because the options for managing their loans in times of financial distress or service to the country are confusing, or because they were placed in forbearance they did not request. The change also responded to the problem of forbearance steering, in which borrowers who were eligible for low- or $0 payments under an IDR plan were instead driven into forbearances and deferments that did not count towards IDR forgiveness. Extending how long struggling borrowers owed their debt bloated the loan portfolio with loans that were unlikely to be successfully repaid.

Restoring the buy-back provision ensures that borrowers do not have to suffer for years after mistakenly opting for forbearance or deferment when they could have enrolled in an IDR plan, or after being placed in a forbearance they did not want. The buy-back provision gives these borrowers another chance to earn credit by paying what they would have owed. It will also allow the government to reduce the number of borrowers in the loan portfolio, particularly low-income borrowers who qualify for $0 or $10 payments, which will also reduce servicing costs.

## Endnotes

1. The settlement only preserves the portion of the 2023 SAVE Rule that allows certain periods of certain types of forbearance and deferment to count towards forgiveness on any of the income-driven repayment plans.
2. Although these provisions, 34 CFR § 685.209(m) and (l), were added in the 2023 Rule and may be subject to vacatur, it appears that the Department may still consider these provisions to be intact, and has in fact begun implementing auto-recertification. In the preamble to the final RISE Rule, the Department noted that it generally agreed with comments supporting auto-enrollment of delinquent borrowers and auto-recertification, and that the rules allow the Secretary to place delinquent borrowers in RAP or other IDR plans and "provide clarity" on automation in recertification. It did not discuss vacatur. 91 Fed. Reg. 23768, 23837, 23893 (May 1, 2026).
3. Final SAVE Rule, 88 Fed. Reg. 43820, 43904 (July 10, 2023) (34 CFR § 685.209(m)).
4. Proposed SAVE Rule, 88 Fed. Reg. 1894, 1910, 1913 (Jan. 11, 2023).
5. Final SAVE Rule, 88 Fed. Reg. at 43869 (July 10, 2023)
6. Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections, Raising Significant Fair Lending Concerns, Protect Borrowers* (Nov. 2, 2020), https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns/
7. Final SAVE Rule, 88 Fed. Reg. at 43903 (July 10, 2023) (34 CFR § 685.209(l)).
8. Proposed SAVE Rule 88 Fed. Reg at 1911 (Jan. 11, 2023).
9. FUTURES Act, Public Law No: 116-91 (Dec. 19, 2019).
10. While this provision, 34 CFR § 685.209(d)(2) was also added by the 2023 Rule and may be subject to vacatur, the Department's final RISE Rule suggests that the Department may still consider this rule to be in effect. The Department amended the provision to allow borrowers in default to enroll in the RAP plan as well as the IBR plan. See 91 Fed. Reg. 23768, 23889-90 (May 1, 2026) (amending § 685.209(d)(2), (4)). The final RISE Rule's preamble discussed §685.209(d)(2) and (d)(4) as though it would continue to be available, noting that OBBBA clarified the repayment plans available to borrowers in default, and did not mention the vacatur. Final RISE Rule, 91 Fed. Reg. 23768, 23776, 23844 (May 1, 2026).
11. *The Student Loan Default Divide: Racial Inequities Play a Role*, Pew Charitable Trusts (Dec. 10, 2024) https://www.pew.org/en/research-and-analysis/reports/2024/12/the-student-loan-default-divide-racial-inequities-play-a-role, Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, Ctr. for Am. Progress (Dec. 1, 2019) https://www.americanprogress.org/article/continued-student-loan-crisis-black-borrowers/, Ben Miller, *Who Are Student Loan Defaulters?* Ctr. for Am. Progress (Dec. 14, 2017) https://www.americanprogress.org/article/student-loan-defaulters/ (70% of defaulters that entered school in 2003 and took out a federal loan within 12 years of entry had parents with no college degree). Department data released in 2023 about the composition of the default portfolio in September 2021 revealed that 66% of borrowers in default had received a Pell grant, indicating they came from a low-income family. Department of Education data shared during 2023 Student Loan Debt Relief Negotiated Rulemaking Prior to Session 2 on November 6-7, 2023, https://www.ed.gov/

sites/ed/files/policy/highered/reg/hearulemaking/2023/data-on-borrowers-in-default.pdf at 5. *See also Who Experiences Default*, Pew Charitable Trusts (Mar. 1, 2024) https://www.pew.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default (identifying that borrowers with disabilities, borrowers with financial volatility, and borrowers with low or negative wealth are also more likely to default).

12. Final SAVE Rule, 88 Fed. Reg. at 43901, 43903 (July 10, 2023) (34 CFR §§ 685.209(d)(2), 685.209(k)(5).
13. 20 U.S. Code § 1098e.
14. Tia Caldwell, Sarah Sattlemeyer, *Millions of Borrowers are Trapped in Long-Term Defaults*, New America (Jan. 17, 2024) https://www.newamerica.org/insights/millions-spend-years-in-student-loan-default/ ("Over the three and a half years **between July 2016 and March 2020, the default system collected nothing—including through both voluntary payments and involuntary collections—from the typical borrower who first defaulted seven or more years ago** and is included in the Department's data. Collections become even less fruitful as time in default extends beyond seven years. The default system recouped less than $100 from 75 percent of borrowers who first defaulted at least 15 years ago." emphasis in original).
15. *Id.*
16. The RISE Final Rule allows eligible defaulted borrowers to enroll in the RAP and IBR plans. However, given the settlement, it is unclear whether the Department interprets this provision as currently in effect or subject to vacatur under the SAVE settlement. *See supra* note 10.
17. *See e.g.*, U.S. Gov't Accountability Office, GAO-17-45, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief* (2016), https://www.gao.gov/products/gao-17-4.
18. Nat'l Consumer L. Ctr., *Comment to the Department of Education on Proposed Revised Pay as You Earn Repayment Plan* (Aug 10, 2015), https://studentloanborrowerassistance.org/wp-content/uploads/2013/05/comments-ed-nprm-aug2015.pdf.
19. Final SAVE Rule, 88 Fed. Reg. at 43903 (July 10, 2023) (34 CFR § 685.209(k)(4)(vi)(B)).
20. *See* Proposed SAVE Rule 88 Fed. Reg. at 1911 (Jan. 11, 2023).
21. Final SAVE Rule, 88 Fed. Reg. 43820, 43903 (July 10, 2023) (34 CFR § 685.209(k)(6)).